USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC#
DATE FILED: 4/26/11

PRO SE OFFICE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUSTAFA FTEJA *Plaintiff,* v. FACEBOOK, INC., *Defendants*	**REPLY TO 20(A) MOTION OF JOINDER** **REPLY IN OPPOSITION TO DEFENDANT'S MOTION TO CHANGE VENUE,** **REPLY IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS ACTION &** **CROSS-MOTION FOR TIME TO FILE A SPECIFIC COMPLAINT**
DIMITRIOS "MITCH" FATOUROS *Joinder Applicant*	Civil Action No. 1:11-cv-00918

1. Your Honor, I ask you not to transfer this case to the Northern District of California as the defendant has asked to. There is no proof that I agreed to a forum selection clause as the defendant alleged in their motion. I do not remember agreeing to their forum selection clause or agreeing to any Facebook agreement. The defendant decided to move this case to Federal Court and now they are trying to transfer it to the Northern District of California.

2. As a citizen of New York, II am entitled to proceed against Facebook Inc in my place of residence which is New York City.

3. Defendant disabled my profile for no reason without any warning, evidence, and explanation. They hurt my feelings, emotionally distressed me, assaulted my good reputation among my friends and family, and assaulted my rights when I exchanged my personal information and my name. Yet facebook is claiming the site is free and they are not entitled to provide me a service although I received multiple invitations to join facebook generated automatically. They should not suspend me in very arrogant and discriminative ways like they did, for no reason and no explanation at all, only because it said on my profile that I am Muslim and my name is Mustafa.

4. If Facebook disabled my account for any other reason, not because of my religion, facebook should answer why and not to force me to file a lawsuit.

5. We do not live in slavery times to let facebook humiliate people's rights from which facebook benefits and earns money.

6. The Court should not move this case from the Southern District of New York State because of my evidence and potential witnesses. All of my potential witnesses, except the Defendant are located near me. All of the facts occurred here in New York State.

7. I have other reasons because of my safety. I have a medical condition and I need to be near family and friends. I am disabled from Ménière's disease which is an inner ear disorder. In the past, I had two surgeries in my right ear. It is often associated with the symptoms of spinning and dizziness. I am on medication called Triam/HCTZ and Meclizine HCL.

8. Your Honor I am pleading not to dismiss this case. I was a conscientious objector in the Serbian army because of the crimes I witnessed in 1991, and I risk my life for justice among innocent people when I was a soldier in the war in former Republic of Yugoslavia. I refused to commit grave injustices, when I was ordered to kill innocent civilians including woman and children, crimes committed by others against Croatians. I have risked my life to protect innocent people. I deserted and at 19 I had to flee Montengro, my own place of birth, leaving behind my whole family my property and everything because I refused to kill innocent people.

9. I found no place of freedom as I found here in the United States of America. I was accepted and what was more important, I found the freedom I never had in my life.

10. When in June 1992 I entered the United States of America I asked not to be return back because I was considered a military deserter in Yugoslavia and I would have been

other friends and family promoting it and making it better place and connecting with people I cannot see sometimes because of my medical condition, sometimes because of my background.

16. For almost 3 years facebook profited from me and my friends and family members who I invited and joined. Without violating their rules I think at least I deserved an explanation why my account was disabled and as your Honor will ask me to provide more complete evidence, I will provide the full complaint with evidence and including witnesses and supports.

17. I have red Mitch Fatouros's documents. I did not know Fatouros until he contacted me. I understand that we were banned from Facebook for almost the same or similar reasons. I also believe that signing up on Facebook does not mean agreeing to Facebook's Terms of Policy (ToP) as Facebook's agreement with its members is presently called. Facebook has no proof I agreed to their ToP. Facebook's ToP disregards common sense suggestions for an on-line binding agreement. Facebook's ToP is invalid. I am annexing Mitch Fatouros's Memorandum because I believe it also applies to my case. Facebook discriminates and its actions hurt 600,000,000 people in the world.

Date: 04-26-2011

Mustafa Fteja, Pro Se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUSTAFA FTEJA *Plaintiff,* v. FACEBOOK, INC., *Defendants*	Civil Action No. 1:11-cv-00918 Present:
DIMITRIOS "MITCH" FATOUROS *Joinder Applicant*	

MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO JOIN THE ACTION UNDER RULE 20(a),
REPLY IN OPPOSITION TO DEFENDANT'S MOTIONS TO CHANGE VENUE,
REPLY IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS ACTION &
CROSS-MOTION FOR TIME TO FILE MORE SPECIFIC COMPLAINT(S)

Dimitrios "Mitch" Fatouros, Pro Se
226 N 17th Street
Bloomfield NY, 07003
(646) 452-4529

TABLE OF CONTENTS

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 4

- A. Both Plaintiffs Are Setting Forth Almost Identical Claims 4
- B. What Is Facebook 5
- C. Facebook's Membership, Recruitment and its Multi-National Nature 8
- D. Foreign Government Officials Exercise Control over Facebook Policy 10
- E. Defendant's Legal Project Manager Misleading and False Declaration; Facebook Members Sign Up without an Agreement 13
- F. The Facebook Credo: When Noble Expectations Crash 18
- G. Unlike *Pro Se* Unemployed Plaintiffs, Defendant Is Capable of Litigating in Any Court, Anytime, Anywhere 20

III. THE LEGAL MERITS 22

FIRST SECTION: Defendant's Claims About Defendant's ToP Are *De Facto* False 22

SECOND SECTION: Motion To Transfer Must Be Denied 23

- A. The Court Can Evaluate Defendant's Forum Selection Clause 23
- B. Courts Have Broad Discretion in Evaluating Forum Selection Clauses 25
- C. Courts Favor Plaintiffs as Defendant's ToP is Mere *Yada Yada* 30

THIRD SECTION: Motion To Dismiss Must Be Denied 33

FOURTH SECTION: Defendant Ought to Have Reinstated Plaintiffs 36

FIFTH SECTION: *Pro Se* Plaintiffs Can File Amended Complaints 36

IV. CONCLUSION 38

V. REQUEST FOR RELIEF 39

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUSTAFA FTEJA *Plaintiff,* v. FACEBOOK, INC., *Defendants*	**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO JOIN THE ACTION UNDER RULE 20(a), REPLY IN OPPOSITION TO DEFENDANT'S MOTIONS TO CHANGE VENUE, REPLY IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS ACTION & CROSS-MOTION FOR TIME TO FILE MORE SPECIFIC COMPLAINT(S)** Civil Action No. 1:11-cv-00918
DIMITRIOS "MITCH" FATOUROS *Joinder Applicant*	Present:

I. INTRODUCTION

1. Under Rule 20(a) I, Dimitrios "Mitch" Fatouros, Pro Se join Fteja v. Facebook as an additional Plaintiff. Clearly, our causes of action are identical and our complaints are symmetric. For the purposes of this motion, "Plaintiffs" refers collectively to myself and Mustafa Fteja, unless otherwise indicated. Thus, I presume the Memorandum of Law ("MoL") submitted by Defendant applies to all Plaintiffs. Essentially, Plaintiffs represent a class or litigants but unfortunately, Plaintiffs failed to secure competent counsel, or any sort of counsel for this motion because of limited finances and obtain a class action certification, in spite of our best efforts. We are both unemployed. Plaintiff Fatouros lost his job in 2008 due to the economy. Plaintiff Fteja is fighting a debilitating condition. Without compensation, no attorney wants to vigorously argue against a multi-national conglomerate with unlimited means over a forum selection clause. Neither of us is an attorney. However, I am an educated paralegal and

an unemployed legal information processor.[1] The opportunity to examine Defendant's motion is historically unprecedented. It presents first-encountered questions in the evolving modern field of internet and electronic media law a legal professional has yet to tackle. While it affects human relations throughout the world, billions of consumers and virtual social networks membership rules, it does not have a case-in-point in a court reporter. Accordingly, I will address Defendant's MoL, always presuming it applies to all Plaintiffs.

2. I have read Defendant's MoL and accompanying documents thoroughly. I have also researched the precedents Defendant wants the Court to consider in its decision. First, Defendant engaged in forum shopping by having the case transferred from a New York State to a New York Federal Court. Although Defendant had a right to seek a transfer, it is clear Defendant is shopping for a more favorable forum. Mr. Fteja did not have any knowledge about the law and within days, Defendant successfully had the case removed, absent any resistance from a pro se layman. Then, Defendant litigating against Mr. Freja, a heroic pro se litigant who was granted Asylum in America 19 years ago and whose first language is other than English, moves this Court to have the case sent to California, de facto prohibiting unemployed pro se Plaintiffs from proceeding with the lawsuit. If the case transfers to a remote court like the one in California proposed by Defendant, pro se Plaintiffs will not be able to continue with it and ultimately, the case will be dismissed for lack of prosecution. Defendant argues for a change of venue with precedents that actually support and protect Plaintiffs' rights. The case must remain here, in this Court where Plaintiff elected to have it transferred from a New York State court. However, in respect to what presently Facebook calls its "Terms of Policy" ("ToP"), a/k/a

---

[1] Feel free to inquire about Plaintiff Fatouros's and Plaintiff Fteja's willingness to work and employment status. Although it will be unethical to hire Plaintiffs *pendente lite*, Plaintiffs are open to being referred to potential employers. Plaintiff Fatouros is interested in becoming a paralegal specializing in legal research and writing. Obviously. Plaintiff Fatouros understands he sounds shameless but he is very sincere and desperate in his quest for meaningful employment.

"Statement" in Defendant's affidavit and "Terms of Use" according to a Declaration submitted by Defendant's own Legal Project Manager Ana Yang ("Yang Decl."), Defendant's MoL fails to provide answers about 3 fundamental questions:

(i) Whether Plaintiffs received adequate notice about the forum selection clause in Facebook's ToP;

(ii) Whether Facebook's exclusive litigation forum for its members is in California; and

(iii) Whether New York or California law strictly prohibit deviations from alleged forum selection clauses.

3. The answers to all the above are respectively (i) NO, (ii) NO and (iii) NO!

II. FACTUAL BACKGROUND

A. Both Plaintiffs Are Setting Forth Almost Identical Claims

4. Mr. Fteja's act of filing a lawsuit against Defendant, a $50,000,000,000 multinational corporation, is heroic. My Balkan brother hand wrote in simple but honest words:

requesting] FACEBOOK HAS BECOME A SERIUS TOOL FOR COMUNICATION, I RELY ON FACEBOOK TO COMMUNICATE WITH FAMILY AND FRIENDS AROUND THE WORLD. THE NATURE OF FACEBOOK DISABLED ACCOUNT DOSEN'T LET YOUR CONTACTS KNOW THAT YOUR ACCOUNT WAS DISABLED, CONTACTS ASSUME THAT I CUT TIES WITH FAMILY AND FRIENDS CAUSING ME SEVERE PERSONAL HARM, AND HURT MY PERSONAL FEELINGS BY DISCRIMINATING

5. As for the symmetry of our separate complaints, like my Balkan brother, I used Facebook to communicate with family and friends around the world, including Facebook members in Greece and Cyprus. Like in my Balkan brother's suspension, Facebook abruptly disabled my account. As in my Balkan brother's situation, relatives, friends and acquaintances including my niece in Greece wondered whether I was cutting off ties with them or, whether something was wrong with me. Like my Balkan brother's discrimination allegation, I realized I was discriminated because of an editorial I had written for SIMERINI, a daily newspaper in Cyprus and had posted on my Facebook "wall." The editorial exposed the duplicitous role the firm of Patton Boggs LLC was playing over the politics of enslaved Northern Cyprus. Since 1974, after the Turkish invasion, Cyprus remains divided by the Turkish Army. Based on U.S. public records, my editorial exposed that Patton Boggs LLP, after being the foremost lobbyist for Turkey, had switched sides to lobbying for Cyprus and had reportedly issued an "alarm" against Americans and Cypriots participating in a Class Action filed in Washington, D.C., over

properties located in occupied northern Cyprus. The properties have been stolen, possessed, taken advantage, or trespassed since 1974[2] by a Turkish affiliate doing business in the U.S. as an "embassy." Like my Balkan Brother, the suspension followed soon thereafter in violation of Defendant's founding "Principles" (explained *infra*). Like my Balkan brother, in spite of repeated requests for an explanation from Defendant, I was never given one. Clearly, I am my Balkan brother's witness as he is mine. Besides my Balkan brother, I had also witnessed at least one other member, John Fidanakis, a New Jersey resident presently in Greece, being banned because of discrimination. Sufficiently, we have enough witnesses near this Court.

B. What Is Facebook

"*I show you how deep the rabbit hole goes.*"
– Morpheus, from the Movie "The Matrix"

6. Defendant Facebook is an internet portal, a virtual social network in cyberspace that invites and recruits people to participate with virtual representations of themselves and their social life. Its proverbial "free lunch" ends with the invitation. Defendant is a profitable business. Defendant's income derives from products and services marketed through Defendant to members as well as brokering information about participants and their monitored activities. Paraphrasing MJ Madison's Rights of Access and the Shape of the Internet, 44 Boston College Law Review 433, (2003)

> "[f]rom [Defendant's] standpoint, the question is whether and how the proprietor can recover enough money via exploitation of the information or otherwise to preserve appropriate incentives to create and distribute information-related products. From [Plaintiffs members'] standpoint, the question is whether and how to obtain and maintain some desirable level of access to and use of information-related products and information itself needed for industrial, cultural, community, political and/or individual development."

---

2 http://www.sigmalive.com/simerini/analiseis/other/305364. "Simerini," the Cypriot "Daily" is owned by "Sigma." sigmalive.com is Sigma's domain. My editorial is in Greek. It was printed with my name as the author and it was abbreviated for space. Its overall message was preserved.

Plaintiffs and Defendants were engaging in an exchange of information that abruptly ended to Plaintiffs detriment without any factual explantaion.

7. Defendant likes to fashion itself as inventing social life through the world wide web. Defendant did not invent anything. Since its inception, Defendant's founders and partners have taken advantage of networks and hardware, already existing, often trespassing in or extracting information from and about other people's property. Social networks existed for thousands of years through churches, societies and political parties among other forms of association. Almost 2 centuries ago, Alexis-Charles-Henri Clérel de Tocqueville wrote a famous passage about America defining it as the Country of associations. In the dawn of the personal computer era, through electronic "bulletin boards," social networks found their virtual equivalent. Next came the internet and the first behemoth of a virtual social network, America on Line ("AoL"). Technology-wise, AoL turned out to be an inflexible fad as it could not adopt fast enough and soon, more versatile virtual social networks took over. At some point "My Space" became the leader but then, out of Harvard University, a student hacker named Mark E. Zuckerberg who was nearly expelled over criminal allegations for his first virtual social network "Facemash" (Katherine Kaplan, Facemash Creator Survives Ad Board, The Harvard Crimson, November 19, 2003[3]) though trial, error, expulsion hearings and later lawsuits, taking full advantage of the networks of American universities, eventually stumbled upon cyber-virtualizing social relations and began crafting the virtual Defendant in partnership with other students. Within a proverbial blink of an eye, what started as a college project, fuelled partially by public funds, graduated to an international conglomerate, with more than

---

3 http://www.thecrimson.com/article.aspx?ref=350143

600,000,000 members worldwide. See Nicholas Carlson, Goldman to clients: Facebook has 600 million users, MSNBC, January 5, 2011.[4]

8. In other words, the bulk of the Defendant members come for countries outside the U.S. Defendant has offices outside the U.S. a fact omitted out of Defendant's papers. For example, it appears Defendant has a European office in Dublin, Ireland where administrators police members' profiles, pages, postings, links and content in general. Defendants claim that Defendant only litigates in California and that all decisions about member suspensions are taken exclusively by Defendant's California employees are false. Ample indications exist that such decisions are taken regularly by Defendant's administrators throughout the world as Defendant relies on reports of employers and "volunteers" from all over the planet in order to suspend members. Defendant's intercontinental operations combined with Plaintiffs having ties to European Facebook members make the case that Defendant cannot assert with absolute certainty non-involvement of Defendant's employees outside the U.S. this early in the trial.

9. Defendant's financial controversy has already raised eyebrows within the international financial community as well as the Securities & Exchange Commission ("SEC"). The shenanigans of Defendant and its banker Goldman Sachs, blurring the lines between a public and a private company have already called the attention of the SEC. Joseph A. Giannone & Sarah N. Lynch, ANALYSIS-Goldman's Facebook fund tests SEC resolve, Reuters, January 4, 2011.[5] In the article, attorney Steven Nelson was quoted as saying:

> "When you have entities out there like Facebook, unregistered and not providing information to the SEC about their activities, the more of that kind of stuff that goes on, the dumber your regulators get and the worse their decision-making gets. And that scares me."

---

4 http://www.msnbc.msn.com/id/40929239/ns/technology_and_science-tech_and_gadgets/

5 http://www.reuters.com/article/2011/01/05/idUSN0424366720110105?pageNumber=1

In embarrassment, Goldman Sachs had to pedal out of offering Defendant's shares to investors privately, after Goldman Sachs had made solicitations to its clients that had at least $2,000,000 to invest, each. Rushe, Dominic, Goldman Sachs suffers Facebook fiasco, guardian.co.uk, 17 January 2011.[6]

C. Facebook's Membership, Recruitment and its Multi-National Nature[7]

10. Defendant did not reach a valuation of $50,000,000,000[8] by passively waiting for members to introduce Defendant to their social circles. At some point, anyone with an email account has received at least one automatically generated solicitation by the Defendant, disguised as an invitation by an acquaintance to become a member. This is achieved by asking applicants, first to have emails sent out to their friends, giving them the option to "Skip" with smaller fonts, at the bottom their computer screens where the option may be invisible to applicants,[9] and then, by creating a virtual member profile. This aggressive process of asking for referrals and new members legitimizes unsolicited emails generated by the Defendant.

11. Defendant relies on an honor system about member's virtual profile and communicating with other members. The results are heinous, criminal and often harm the young and innocent. See, for example, Nico Hines, Serial sex offender Peter Chapman killed teenager groomed on Facebook, The Sunday Times, March 8, 2010;[10] Sarah Platt, Teen accused of

---

6 http://www.guardian.co.uk/business/2011/jan/17/goldman-sachs-facebook-private-placement

7 This part of the Plaintiffs' MoL will be submitted separately to the Federal Trade Commission ("FTC"). As demonstrated herein clearly, Defendant is violating Section 4 of the FTC Act.

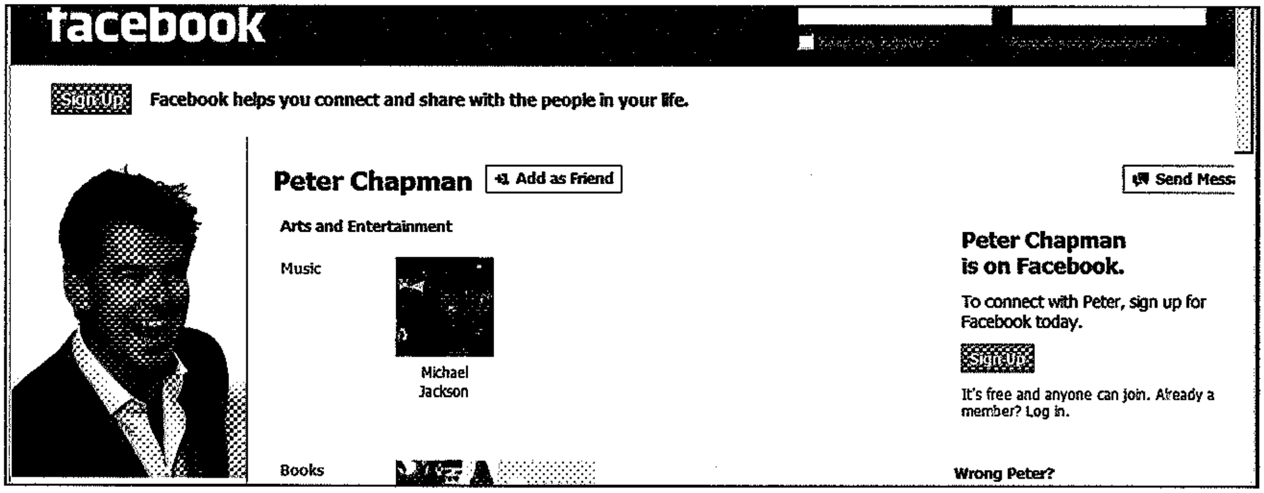
8 Susanne Craig & Andrew Ross Sorkin, Goldman Offering Clients a Chance to Invest in Facebook, The New York Times, January 2, 2011, http://dealbook.nytimes.com/2011/01/02/goldman-invests-in-facebook-at-50-billion-valuation/

9 *Smaller font used for demonstration purposes.*

10 http://www.timesonline.co.uk/tol/news/uk/crime/article7054001.ece. When members like 17-year-old Ashleigh Hall are murdered, upholding Defendant's exclusivity forum acts as shield by placing financial burdens upon Plaintiffs thus favoring $50,000,000,000 multinational Defendant and its worldwide army of litigators. Even if Defendant's European office is a separate entity, it still connects all members through a global platform.

blackmailing students for sex on Facebook sentenced to 15 years, FOX6, February 24, 2010;[11] and Staff Reporter, Cyber Bullies Harass Teen on Facebook Before, After Her Suicide, KTLA 5, March 25, 2010.[12]

12. The Nico Hines article is about a 17 year old victim befriended by her killer Peter Chapman on Facebook. "Peter Chapman" is a common name. In fact, many Facebook British members are listed under the name, including one who uses Pierce "*007*" Brosnan's image or likeness as his own, presently:


facebook
Sign Up
Facebook helps you connect and share with the people in your life.
Peter Chapman
Add as Friend
Send Mess
Arts and Entertainment
Music
Michael Jackson
Books
Peter Chapman is on Facebook.
To connect with Peter, sign up for Facebook today.
Sign Up
It's free and anyone can join. Already a member? Log in.
Wrong Peter?

Unless this Peter Chapman is *007*'s unknown twin or stunt double, this is infringement. Hence the confusion: members' impersonation, or even news stories about people with common names, when combined with accidental or coincidental Facebook members suspensions, can wreak havoc and destroy reputations. Perhaps this is why Peter Chapman uses *007*'s picture. Or perhaps, this is the other "Peter Chapman" from his prison cell scanning Facebook for his next victim.

13. Once a member is excluded from Facebook, confusion follows. It sounds benign but for example as it commonly happens, when an employee has befriended an employer, a

[11] http://www.fox6now.com/news/witi-100225-stancl-sentenced,0,5790156.story. According to the article, 30 underage male students were blackmailed into having with a now convicted 19 year old male.

[12] http://www.ktla.com/ktla-facebook-suicide-bullies,0,1003884.story

supervisor or a subordinate and either suddenly, sees they have been "de-friended" without knowledge of their "Facebook friend's"[13] abrupt or unjust Facebook suspension, it sends an adversarial and detrimental message. This has also happened among Plaintiffs' relatives, living in different continents. Both Plaintiffs' complaints have merit as Defendant's suspensions cause tension in human relations. In addition, the countless news stories where Defendant was a factor in crimes or just plain negligent deeds warrant a trial on whether wanton members' suspensions cause hardships.

D. Foreign Government Officials Exercise Control over Facebook Policy

14. Still, all these reasons pale in comparison to what Defendant has potentially become because Defendant granted administrative access to unscrupulous and politically motivated foreign government agents who may even be working against the interests of the people of the United States and other countries. It appears that unlike other American competitors including Google, Defendant has negligently let that happened, hence Plaintiffs claims of Discrimination are valid and perhaps harmful, if true, to U.S. national security.

15. The only difference with my Balkan brother's case is who could have potentially targeted me of Facebook. I believe outspoken Greek and Greek Americans, like me, were targeted by Turkish administrators hired by the Defendant. Based on news articles, I further believe that Defendant has succumbed to political pressure by Turkey into hiring Turkish administrators. Foremost, I believe Turkey's Facebook interference is a matter of U.S. National as well as International Security.

---

[13] "As a neologism, the term is a transitive verb meaning 'to send a friend request on Facebook.' It was used in this sense by comedian Stephen Colbert [...] when Colbert satirically told Facebook founder Mark Zuckerberg, 'Mark, friend me.' Due to its potential effects on the doctor-patient relationship, some doctors have asked patients not to Friend them. It is possible in Facebook's friend settings to remove someone from the Friend status, which is referred to as 'De-Friend' or 'Unfriend,' which was New Oxford American Dictionary's word of the year in 2009. [...] 'Defriend' has also been used to refer to layoffs in the social media industry." http://en.wikipedia.org/wiki/Friend_(Facebook).

16. I began noticing news stories about Defendant's competitor Google and its subsidiaries including YouTube, another social network that relies on video and interconnects with Facebook. Repeatedly over the years, Google and its affiliates have been banned, suspended and "throttled," i.e., their services have been slowed, in Turkey, by the government of Turkey. For example, see Sara Yin, YouTube Banned In Turkey (Again), PC Magazine, November 3, 2010.[14] In it, Yin reported:

> "The battle between YouTube and Turkish officials continued this week as Turkey reportedly *unblocked* and then *re-blocked* the Google-owned video site in the country over unflattering videos of the country's political leaders. Turkey *re-instated* a ban on YouTube this week, days after a 2.5-year *ban was lifted* last Saturday [...] a Turkish court *banned* YouTube again, this time over an old video purportedly showing former opposition leader Deniz Baykal [...] Scott Rubin, Google's head of public policy and communications strategy for EMEA, said the company was investigating the reported ban. [...] '*A removal for a Community Guidelines violation is a global removal, quite different from the previous demand that we apply Turkish law outside the borders of Turkey, which, of course, we refused to do*.' Turkish authorities first imposed a *ban* on YouTube for two days in 2007 over four videos that were deemed insulting to Turkey's founder, Mustafa Kemal Ataturk. *Another ban was put into place in May 2008 over the same issue, which lasted for more than two years*. YouTube refused to remove the videos from its site but made them inaccessible to users in Turkey. A court in Ankara on Saturday lifted the *ban* after a German-based company reportedly used its technology to *remove* the videos from the site, Reuters said. YouTube later re-posted the videos. The Tuesday *ban*, imposed by another court in Ankara, related to the aforementioned video of Baykal, Reuters reported [...] In June, Turkey inexplicably *banned* many Google IP addresses, mostly for apps like Google Translate, Google Books and Google Docs, the International Business Times reported. *[Emphasis added]*

Clearly, Turkey is attempting to impose its standards repudiated by the U.S. Constitution upon the rest of the world and thus, all members of Facebook, including Americans. While Defendant may argue that First Amendment does not apply to them because they are a private company, the First Amendment was written to protect Freedom of Expression in the media and Facebook is a dominant force in modern electronic media. Defendant has an obligation to the U.S. and its people to protect freedom of expression. But in spite of decisions taken against Defendant in distant litigation fora, Turkey's officials demonstrate preference for Defendant over Google or YouTube as the same standard Turkish justice is not applied equally against Facebook. Facebook has yet to reportedly suffer a ban in Turkey, in spite of analogous convictions involving Turkish public figures. See, for example, Asbarez Staff, Turkey May Ban Facebook, Asbarez|com, October 8, 2010:

---

[14] http://www.pcmag.com/article2/0,2817,2372043,00.asp

> "The latest Internet controversy was sparked when lawyers for Kemal Kılıçdaroğlu, the leader of the Republican People's Party (CHP) filed a criminal complaint over a Facebook group claiming that the opposition leader was a member of the outlawed Kurdistan Workers' Party (PKK). Addressing rumors that Facebook might be banned as a result, Transportation Minister Binali Yıldırım told attendees at an informatics fair that *30 judicial decisions had been issued to ban the site [of Defendant Facebook] in Turkey*. '*No action was taken against those decisions*; applications to a higher court [were] not filed,' Yıldırım said [...] '[Facebook] did not come and meet with the administration and did not apply to the higher court either. Foreign companies are subject to the same laws as domestic ones.' *[Emphasis Added]*[15]

17. Indeed, Turkey's Transportation Minister was less than candid. A Turkish Facebook ban has never been reported by the media because Turkey has the upper hand in placing Facebook administrators, controlling anti-Turkish content inside and outside Turkey as the following job posting by Defendant proves:

> "Analyst, User Operations – Turkish (Dublin). Facebook is seeking Turkish speaking analysts [...] responsible for maintaining user safety, engagement, and site understanding by responding to email inquiries and *abuse reports [emphasis added]*. Additionally, this position is responsible for understanding, analyzing, and communicating patterns in user behavior to the rest of the company."[16]

What remains to be seen is whether European, Turkish and other ethnic or religiously motivated administrators systematically control content and memberships, first in the U.S. and then throughout the world. There are ample indications they do. Proving such grave allegations can only be done through a trial and Discovery or by a U.S. Government inquiry. Plaintiffs' claims are fortified by Google's Scott Rubin allegation of Turkey demanding Google to "*apply Turkish law outside the borders of Turkey*" vis-à-vis (i) Turkey not banning Facebook under 30 Turkish judicial decisions analogous to the decisions resulting in the Google bans and (ii) the hiring of Turkish-friendly administrators, thus applying Turkish law outside Turkey. The double conclusion is inescapable and applies to the merits of this Case: first, our Case involves discrimination and second, our Case can be tried anywhere in the world because Plaintiffs' and Defendant's witnesses are located throughout the world and Defendant is subject to jurisdictions and venues beyond Defendant's home turf in California.

---

[15] http://asbarez.com/86459/turkey-may-ban-facebook/

[16] http://www.turkishforum.com.tr/en/content/2009/06/11/analyst-user-operations-turkish-dublin

E. Defendant's Legal Project Manager Misleading and False Declaration; Facebook Members Sign Up without an Agreement

18. Thus far, it is clear Defendant was less than sincere when Defendant's Legal Project Manager Ana Yang's declared

> "All or nearly all of the witnesses that Facebook would rely on in this matter are located in California. For example, Facebook's relevant User Operations employees are located in Palo Alto, California. Facebook's Site Integrity employees, who investigate abuses of Facebook, are located in Palo Alto, California [...] In addition, all or nearly all of the documentary evidence relating to this matter is located in California. For example, Facebook's records relating to plaintiff's account are located in California." Yang Decl. pp. 1-2.

Whether and how Defendant's Site Integrity employees consult with their counterparts, associates, volunteers and members in Europe, Turkey and the rest of the world, remains to be seen during a trial.

19. Further, Yang, attaching sloppy and incomplete exhibits falsely declared

> "Any person who registered to use Facebook on or about January 1, 2009 was required to indicate that he or she had read and agreed to Facebook's 'Terms of Use.' A true and correct copy of the Terms of Use in effect on January 1, 2009, when plaintiff registered to use Facebook, is attached hereto as Exhibit A. The Terms of Use in effect on January 1, 2009 stated that [b]y accessing or using our web site [...], you (the 'User') signify that you have read, understand and agree to

> be bound by these Terms of Use [...] *Plaintiff could not have registered for a Facebook account without indicating his agreement [emphasis added]* [...] Since the time that plaintiff registered to use Facebook, Facebook has revised its Terms of Use now referred to as the Statement of Rights and Responsibilities, or 'Statement.' A true and correct copy of the Statement in effect on September 24, 2010, when plaintiff alleges his account was disabled, is attached hereto as Exhibit B." Yang Decl. pp 2-3.

Besides overboard generalizations, nothing in Yang's Declaration shows specifically that Plaintiffs were aware of the ever-changing and elusive Facebook ToP. Yang, admittedly having access to relevant documents, presumes adversely absent a modicum of factual support.

20. First, Young is misleading the Court with Defendant's incomplete and poorly copied agreements. Reading the text of both Yang's Exhibits reveals the omission. Exhibit B, Defendant's ToP as of September 24, 2010, is submitted in tiny letters and stripped of links that connect it to other extension-agreements referenced therein! In other words, Defendant and Yang say to this Court "our ToP is just 'yada yada.'" If this Court's pleadings standards were applied Defendant's present ToP, almost identical to the one submitted by Yang, revised days later on October 4, found at http://www.facebook.com/terms.php and the ToP was to be annexed herein, it would take well over 12 pages as an Exhibit! Plaintiffs will submit the exhibit if the court requests it, however Yang's Exhibit B and the equivalent 12+ pages are only a small part of a greater, convoluted agreement!

21. Second, more important, Yang's Exhibit B ends with a series of links to other relevant parts of the Agreement, left out of the Exhibits:

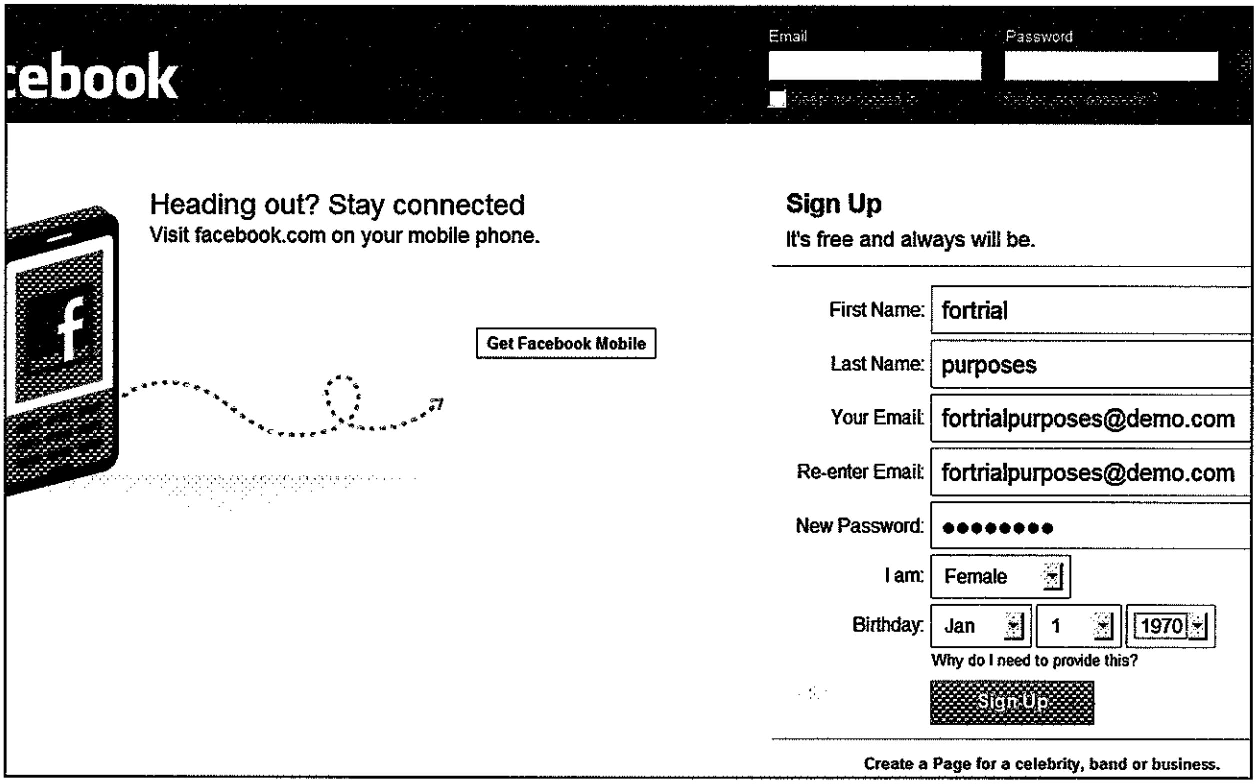
You may also want to review the following documents:

Privacy Policy: The Privacy Policy is designed to help you understand how we collect and use information.
Payment Terms: These additional terms apply to all payments made on or through Facebook.
About Platform: This page helps you better understand what happens when you add a third-party application or use Facebook Connect, including how they may access and use your data.
Developer Principles and Policies: These guidelines outline the policies that apply to applications, including Connect sites.
Advertising Guidelines: These guidelines outline the policies that apply to advertisements placed on Facebook.
Promotions Guidelines: These guidelines outline the policies that apply if you have obtained written pre-approval from us to offer contests, sweepstakes, and other types of promotions on Facebook.
How to Report Claims of Intellectual Property Infringement
How to Appeal Claims of Copyright Infringement
Pages Terms

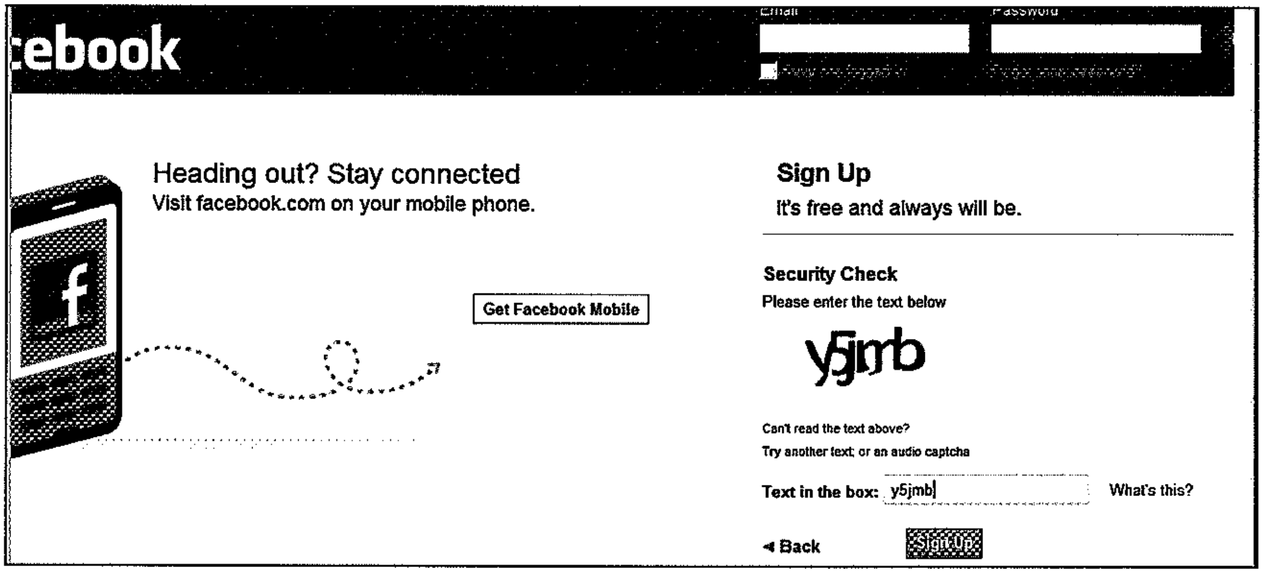
Hidden in microscopic characters are actual links to the greater part(s) of the agreement, which is a "one size fits all" blanket contract of adhesion at best. Presently, its text contains on-line links that open the subsequent parts to this agreement. Defendant submitted to court only a small part of Defendant's ToP. The actual agreement, in this Court's required format should surpass 150 printed pages, according to my estimation. Defendant's discombobulated agreement is a consumer's labyrinth-like nightmare of fine print. Defendant's employees in this filing have superficially treated Defendant's ToP as yada yada. My estimation does not take into account translated versions of the ToP and variations within ToP clauses that pertain to other countries. Besides, the ToP contains more links that lead to a web of links that do not show as links in Yang's Exhibits. Yang's Declaration misleads the Court through false statements and partial Exhibits.

22. Third, Yang claims that Defendant's records reside exclusively in California. I do not recall going to California to sign any Facebook records. I am certain those electronic records can be made available via email and facsimile to any location in the world.

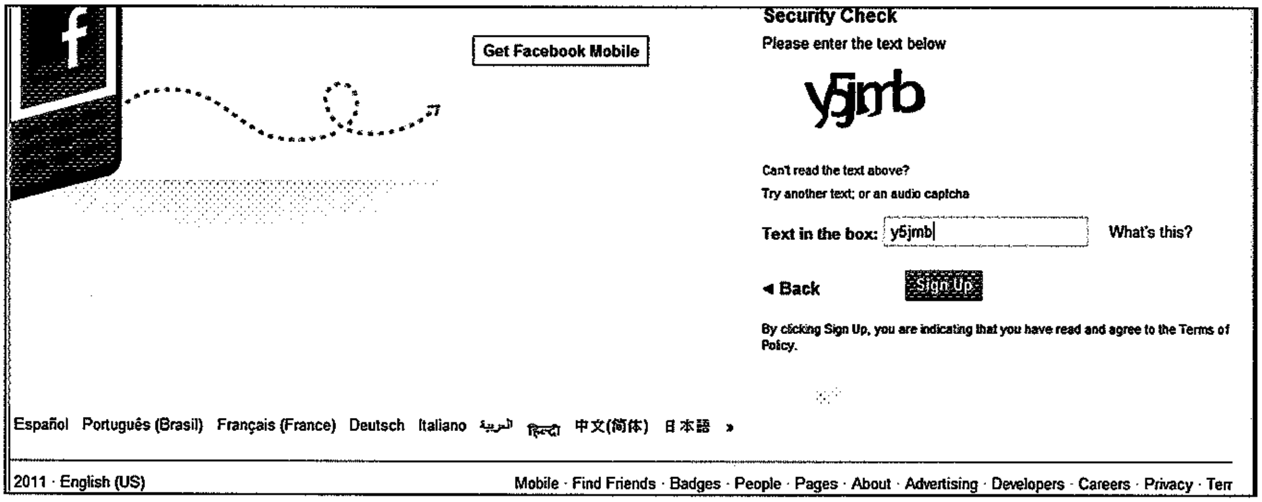
23. Finally, Defendant considers its ToP as yada yada when it recruits new members. This is what new members see in order to sign up:


:ebook
Email
Password
Heading out? Stay connected
Visit facebook.com on your mobile phone.
Get Facebook Mobile
Sign Up
It's free and always will be.
First Name: fortrial
Last Name: purposes
Your Email: fortrialpurposes@demo.com
Re-enter Email: fortrialpurposes@demo.com
New Password: ●●●●●●●●
I am: Female
Birthday: Jan 1 1970
Why do I need to provide this?
Sign Up
Create a Page for a celebrity, band or business.

For no apparent reason, Defendant has determined their sign up screen must dominate and expand beyond a user's computer screen. There is no ToP reference or link on this page. Thus, one begins signing up without reading the ToP. The next screen appears once "Sign Up" is pressed:


:ebook
Heading out? Stay connected
Visit facebook.com on your mobile phone.
Get Facebook Mobile
Sign Up
It's free and always will be.
Security Check
Please enter the text below
Can't read the text above?
Try another text or an audio captcha
Text in the box: y5jmb
What's this?
Back
Sign Up

Defendant cannot be relied upon when Defendant falsely insists on informing Plaintiffs of the forum selection clause. Only if an applicant has set their browser at the proper size and their screen resolution at the right setting, they will see Defendant's microscopic reference to Defendant's ToP:


Get Facebook Mobile
Security Check
Please enter the text below
Can't read the text above?
Try another text; or an audio captcha
Text in the box: y5jmb
What's this?
◄ Back
Sign Up
By clicking Sign Up, you are indicating that you have read and agree to the Terms of Policy.
Español Português (Brasil) Français (France) Deutsch Italiano
2011 · English (US)
Mobile · Find Friends · Badges · People · Pages · About · Advertising · Developers · Careers · Privacy · Terr

Otherwise, members never receive notice about Defendant's ToP. Invisibility combined with limited translations of the ToP, its non-displayed segments and variations thereof result in millions of people throughout the world signing up, giving Defendant access to email addresses of hundreds of millions more without ever receiving notice of an agreement! This is how deceptively Defendant gathered 600,000,000 members.

24. In conclusion, Defendant's ToP is just yada yada Defendant's employees never take seriously and probably have never read because of its labyrinthic nature. After all, Defendant's ToP size matters as Defendant's own employees do not have time to read it or print it, demonstrated through the partial Exhibits in Yang's Declaration. Defendant uses yada yada to shield Defendant from litigation. Plaintiffs never received adequate warning over yada yada, or notice of a forum selection clause.

F. The Facebook Credo: When Noble Expectations Crash

25. Further, Yang's Declaration fails to provide a copy of Facebook's own "Principles," a set of rules Facebook only maintains as a ghost of past aspirations.[17] They state:

> *"We are building Facebook to make the world more open and transparent, which we believe will create greater understanding and connection. Facebook promotes openness and transparency by giving individuals greater power to share and connect, and certain principles guide Facebook in pursuing these goals. Achieving these principles should be constrained only by limitations of law, technology, and evolving social norms. We therefore establish these Principles as the foundation of the rights and responsibilities of those within the Facebook Service.*
>
> *1. Freedom to Share and Connect*
> *People should have the freedom to share whatever information they want, in any medium and any format, and have the right to connect online with anyone - any person, organization or service - as long as they both consent to the connection.*
>
> *2. Ownership and Control of Information*
> *People should own their information. They should have the freedom to share it with anyone they want and take it with them anywhere they want, including removing it from the Facebook Service. People should have the freedom to decide with whom they will share their information, and to set privacy controls to protect those choices. Those controls, however, are not capable of limiting how those who have received information may use it, particularly outside the Facebook Service.*
>
> *3. Free Flow of Information*
> *People should have the freedom to access all of the information made available to them by others. People should also have practical tools that make it easy, quick, and efficient to share and access this information.*
>
> *4. Fundamental Equality*
> *Every Person - whether individual, advertiser, developer, organization, or other entity - should have representation and access to distribution and information within the Facebook Service, regardless of the Person's primary activity. There should be a single set of principles, rights, and responsibilities that should apply to all People using the Facebook Service.*
>
> *5. Social Value*
> *People should have the freedom to build trust and reputation through their identity and connections, and should not have their presence on the Facebook*

17 http://www.facebook.com/principles.php

Service removed for reasons other than those described in Facebook's Statement of Rights and Responsibilities.

6. Open Platforms and Standards
People should have programmatic interfaces for sharing and accessing the information available to them. The specifications for these interfaces should be published and made available and accessible to everyone.

7. Fundamental Service
People should be able to use Facebook for free to establish a presence, connect with others, and share information with them. Every Person should be able to use the Facebook Service regardless of his or her level of participation or contribution.

8. Common Welfare
The rights and responsibilities of Facebook and the People that use it should be described in a Statement of Rights and Responsibilities, which should not be inconsistent with these Principles.

9. Transparent Process
Facebook should publicly make available information about its purpose, plans, policies, and operations. Facebook should have a town hall process of notice and comment and a system of voting to encourage input and discourse on amendments to these Principles or to the Rights and Responsibilities. *[Emphasis added]*

10. One World
The Facebook Service should transcend geographic and national boundaries and be available to everyone in the world."

Take notice of No. 10 headed as "One Word" matching Defendant's megalomaniacal aspirations of world domination. A simple survey of Facebook groups indicates that Defendant fails to live up to the other 9 of Defendant's self-professed standards.

26. Further, my Facebook research confirms disturbing discriminatory practices against Defendant's professed Principles. Near the time I was suspended, a survey of Facebook member created pages I conducted revealed a whopping 120+ Facebook pages that proclaimed "F*** Greece" *[explicit redacted]*. However, there was only 1 Facebook page that says "F*** Ataturk" (referring to "modern" Turkey's founder Kemal Ataturk, the cause of the Turkish

Google and YouTube bans) and about 30 stating "F*** Turkey." Notice that the headings of these pages are in English, presumably meeting the approval of Defendant's monitors in U.S. and for certain, by permitting those pages, Defendant cannot speak from all sides of Defendant's proverbial mouth and claims that Defendant bans members for harassment. All these Facebook pages can be deemed reprehensible under a vague and discriminatory standard of "harassment" but the numbers indicate a disproportionate number of pro-Turkish monitors work for Facebook. Ataturk has in a single Facebook group 2,200,000+ fans. Ataturk has many groups with fans totaling tens of millions. In contradiction, Facebook pages that recognize the Greek, the Armenian and the Assyrian/Chaldean genocides resulting in the torture, expulsion, murdering and ethnic cleansing of millions during Ataturk's era, as well as the Kurdish genocides and the 1974 invasion of Cyprus have insignificant memberships.

27. These facts support allegations of discrimination and ultimately, where a Defendant's trial will be held is irrelevant because Defendant's records are supposedly transparent throughout the world by Defendant's admission. See Transparent Process, Facebook Principles, at http://www.facebook.com/principles.php and *supra*.

G. Unlike *Pro Se* Unemployed Plaintiffs, Defendant Is Capable of Litigating in Any Court, Anytime, Anywhere

28. Instead of providing explanations over why both Plaintiffs were suspended, which would have cost Defendant $0, Defendant who had failed to provide a meaningful process to redress members' suspension, opted for litigation. After all, a few thousand dollars does not make a whole lot of difference to a $50,000,000,000 Defendant. But apparently, Defendant's corporate ego-like trip does. With unlimited resources, Defendant experiences no inconvenience over sending a few records to New York and arranging for teleconferences during trial. Or, perhaps this Court can write history by conducting the first ever trial through Defendant's

real-time messaging application known as "Facebook Chat." For a Defendant who advocates and insists upon instant global communications, mandating a single litigation forum to the world imposing moving to California upon many potential Plaintiffs, is suspiciously anachronistic.

29. But seriously, we shall welcome a $50,000,000,000 Defendant to New York and nearby Courts via a signed judicial order.

III. THE LEGAL MERITS

FIRST SECTION: DEFENDANT'S CLAIMS ABOUT DEFENDANT'S TOP ARE *DE FACTO* FALSE

30. Defendant dismisses Plaintiffs' allegations, described as "contract breaches" by Defendant's hypothesis, and discrimination claims as "meritless." Defendant's responses are tacky, hypocritical, misleading and baseless. There is no evidence Plaintiffs willingly agreed to resolve any disputes with Defendant in California. Instead, Defendant's filings give ample evidence that Defendant publishes its ToP as yada yada, thus not providing Plaintiffs notice of a forum selection clause. Besides, it would be fundamentally unjust for a multinational corporate Defendant with 600,000,000 members all over the world to impose an exclusive U.S. litigation venue to the world. Trials already held in Turkey against Defendant prove that Defendant is subject to litigation elsewhere. According to the news story cited *supra*, Defendant never challenged the forum in at least 30 Turkish cases. See again, Asbarez Staff, Turkey May Ban Facebook, Asbarez|com, October 8, 2010.[18]

31. This Case could have been brought and tried anywhere. Plaintiffs never admitted to receiving Defendant's ToP and demonstrably, Defendant does not give adequate notice of its ToP. Further, Facebook members are located throughout New York, New Jersey and the entire planet. Defendant's memberships are not limited to the County of Santa Clara or California. Furthermore, millions of professional and businesses throughout the world use Facebook to promote their products and services to its 600,000,000 members. Facebook conducts business on equal standing in each and every jurisdiction of the United States and the world. Hence, this case can be tried in New York.

---

[18] http://asbarez.com/86459/turkey-may-ban-facebook/

32. The Northern District of California is merely a forum of preference for the Defendant valued at $50,000,000,000 but not for two unemployed immigrant Plaintiffs. The interest of justice cannot be as unbalanced. Thus, Plaintiffs object to Defendant's Motion to Transfer or Dismiss ("MTD") because Defendant's purpose is to have this trial de facto dismissed for lack of prosecution and anything but the interest of justice. Defendant must be held liable for damages including consumer related ones and failing to adhere to Defendant's own *Facebook Principles*.

33. Plaintiff Fteja is a resident of New York while I, Plaintiff Fatouros, am a resident of New Jersey. Defendant Facebook has offices in at least two places, one in the U.S. and one in Ireland. At least 30 previous trials have been held against Defendant in Turkey. As a result, more convenient fora will be either New York or New Jersey, or arguendo Europe where both Plaintiffs maintain ties and Defendant has offices. However, both Plaintiffs want the case to remain in this Court as a number of their witnesses being Facebook members, reside nearby. Besides, both Plaintiffs have become each other's witness as they can both call on each other to testify against Defendant.

34. Plaintiffs have already set forth enough facts and law to have this Court deny Defendant's motion. But also, Defendant's MoL cited case law guides this Court to deny Defendant's MTD.

SECOND SECTION: MOTION TO TRANSFER MUST BE DENIED

A. The Court Can Evaluate Defendant's Forum Selection Clause

35. As for the Transfer part of Defendant's MTD, Defendant's reliance and analysis on the pre-Internet case Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 597 (1991) about forum selection clauses written on the back of documents in tiny print, is selectively incomplete. Carnival does not treat forum selection clauses as absolutes. It permits case-by-case examination

of forum selection clauses and provides grounds for exceptions to upholding them. This motion follows the reasoning of Carnival but it is distinguishable in its outcome by its merits. Carnival favors Plaintiffs:

> "In dismissing the case for lack of personal jurisdiction over petitioner, the District Court made no finding regarding the *physical and financial impediments to the Shutes' pursuing their case* in Florida. The Court of Appeals' conclusory reference to the record provides no basis for this Court to validate the finding of inconvenience [...] *It bears emphasis that forum-selection clauses contained in form passage contracts are subject to judicial scrutiny for fundamental fairness*. In this case, there is *no indication that petitioner set Florida as the forum in which disputes were to be resolved as a means of discouraging cruise passengers from pursuing legitimate claims* [...] many of its cruises depart from and return to Florida ports. Similarly, there is no evidence that petitioner obtained respondents' accession to the forum clause by fraud or overreaching. Finally, respondents have conceded that they were given notice of the forum provision and, therefore, presumably retained the option of rejecting the contract with impunity. In the case before us, therefore, we conclude that the Court of Appeals erred in refusing to enforce the forum-selection clause." *[Emphasis added]* Carnival 594-595.

Unlike the Plaintiff in Carnival, Plaintiffs never received a contract "in hand" with a monetary promise or exchange that follows purchasing a ticket including a written forum selection clause. While only a very small percentage of Defendant's 600,000,000 members come from the State of California and its population of 37,000,000, Carnival's operations and employees were situated in Florida. Most of Defendant's members and business ties are located outside California in addition to most of Plaintiffs' dozens if not hundreds of potential witnesses located elsewhere. This disparity and Defendant's reliance on a nearly invisible, voluminous, redacted agreement in fine print gives rise to "*indications that [Defendant] set [California] as the forum in which disputes were to be resolved as a means of discouraging [members] from pursuing legitimate claims*" (paraphrasing Carnival, *supra*).

36. Carnival relies in part on Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972). Unlike Carnival Cruises Lines and its maritime operations within the State of Florida as its starting point, Defendant has manifested its aspiration of global dominance. Bremen instructs:

> "In an era of expanding world trade […] [w]e cannot have trade and commerce in world markets and international waters exclusively on our terms, governed by our laws, and resolved in our courts […] Forum-selection clauses have historically not been favored by American courts. Many courts, federal and state, have declined to enforce such clauses on the ground that they were 'contrary to public policy,' or that their effect was to 'oust the jurisdiction' of the court. Although this view apparently still has considerable acceptance, other courts are tending to adopt a more hospitable attitude toward forum-selection clauses. This view, advanced in the well-reasoned dissenting opinion in the instant case, is that such clauses are prima facie valid and should be enforced unless enforcement is shown by the resisting party to be 'unreasonable' under the circumstances." Bremen at 9-10.

Like Carnival, Bremen provided for exceptions to enforcing forum selection clauses when "*enforcement is shown by the resisting party to be 'unreasonable' under the circumstances.*"

37. In conclusion, the Court can evaluate Defendant's Forum Selection Clause without upsetting precedents and determine it is a "*means of discouraging members from pursuing legitimate claims.*"

B. Courts Have Broad Discretion in Evaluating Forum Selection Clauses

38. The broad discretion of the Court, as explained in Herbert Ltd. P'ship v. Electronic Arts, Inc., 325 F. Supp. 2d 282 (S.D.N.Y. 2004) favors Plaintiffs and not Defendant. Herbert Ltd. provides a 9-prone test that when applied, favors retaining this case in New York, or in a nearby Court. The 9-prone test was perverted in Defendant's MoL, pp. 6-9. The correct analysis of Herbert Ltd., 285-286 overwhelmingly supports Plaintiffs:

First Prone, Convenience of Witnesses:

Defendant claimed "*nearly all of the witnesses will be Facebook employees […] Those employees work and reside in the Northern District of California.*" Yang Decl. p 3.

Plaintiffs claim that their witnesses reside near this Court and outside the U.S.

Herbert Ltd. favors the state where most of the witnesses reside, at 288: "*On the whole, the Court concludes that more witnesses with more material testimony reside in California than in New York.*" Plaintiffs' friends on Facebook are in the hundreds as their friends are their witnesses for assessing damages. Thus, Herbert Ltd.'s First Prone test favors Plaintiffs' Opposition to Defendant's MTD. The case must stay in New York.

Second Prone, Convenience of Parties:

Defendant claimed "*The Facebook employees who monitor and make decisions about users' accounts work at Facebook's Palo Alto headquarters [...] As a result, the 'principal events' in this case—i.e., any decisions or actions relating to Plaintiff's Facebook account—occurred in the Northern District of California [...]*"

Plaintiffs believe this analysis is flawed because:

(i) The test referrers to the parties in the action, not Defendant's employees, already covered in the First Prone test. Defendant reiterates the First Prone witnesses as acquiring equal standing with the Parties in his case. Defendant has equated its employees with Herbert Ltd.'s Defendants that included household names like Sony, Wal-Mart, Best Buy and KB Toys and their principal officers.

(ii) This prone is not about "principal events." This prone is based on giving equal gravity to all "Parties," Plaintiffs and Defendant. Thus, both Plaintiffs are near New York, while the Defendant, an international company doing business throughout the world, is based in California. A Corporation "Defendant" is ONE person under the law, not as many as its employees. Arithmetically, the prone would favor the Plaintiffs without considering Defendant's global operations which factor in itself would favor the provision of additional litigation fora. But Justice is not merely about numbers.

(iii) In Herbert Ltd. the New York Court granting a Motion to Transfer pointed out for the party opposing that Motion, its "*own principals reside in Seattle, which is thousands of miles and three time zones closer to California than to New York.*" To the contrary, in this case Plaintiffs reside within commuting distance of this Court. Thus, Herbert Ltd.'s Second Prone test favors Plaintiffs' Opposition to Defendant's MTD. The case must stay in New York.

Third Prone, Location of Relevant Documents and *Relative Ease Of Access To Sources Of Proof*:

Defendant claims "*the bulk of the documents that* ***may be*** *relevant in this dispute are located in California.*"

Plaintiffs ask the Court to take notice that by its own "*may be*" admission, Defendant is uncertain about where its documents are located and concede this point to Plaintiffs. Besides, Herbert Ltd. is explicit: "*Modern technologies such as photocopying and faxing permit any documents in California to be transported to New York with presumably minimal difficulty, and Defendants have made no showing of any particular burden that transferring the documents would entail.*" Herbert Ltd. described the burden of transferring "*may be*" (in this case) documents as incrementally slight. This is a *de minimis* factor. Thus, Herbert Ltd.'s Third Prone test favors Plaintiffs' Opposition to Defendant's MTD. The case must stay in New York.

Fourth Prone, Locus of the Operative Facts:

Defendant reiterates its previous fact again for a good reason: the Herbert Ltd. Court granted this test to the Party Opposing that Motion to Transfer. Thus, Herbert Ltd.'s

Fourth Prone test favors Plaintiffs' Opposition to Defendant's MTD. The case must stay in New York.

Fifth Prone, Availability of Process to Compel the Attendance of Unwilling Witnesses:

Defendant states that it may have "*to compel the attendance of unwilling witnesses.*" Defendant cannot possibly refer to Plaintiffs and their worldwide friends, thus Defendant considers "*unwilling witnesses*" ITS OWN EMPLOYEES!! This is an error. Herbert Ltd. explains at 290 that "*employees of a party are available in any venue by virtue of the employment relationship, and therefore the reach of a court's subpoena power over employees who do not reside in the forum is essentially irrelevant to a motion to transfer [...] The Court need not delve further into whether non-officer employees must be subpoenaed to testify, because Defendants have made no representation that any of their non-New York witnesses, whether or not they are employees of parties, are unwilling to testify in New York should the case remain here.*" Thus, Herbert Ltd.'s Fifth Prone test favors Plaintiffs' Opposition to Defendant's MTD. The case must stay in New York.

Sixth Prone, Relative Means of the Parties:

Defendant valued at $50,000,000,000 is litigating against 2 unemployed immigrant Plaintiffs whose first language is not English but believe in justice. Defendant has already retained counsel for representation in New York. Herbert Ltd.'s logic at 290 hands this test to Plaintiffs and Defendant has chosen to omit opposition based on this prone test in their MoL wisely. Thus, Herbert Ltd.'s Sixth Prone test favors Plaintiffs' Opposition to Defendant's MTD. The case must stay in New York.

Seventh Prone, Forum's Familiarity With Governing Law:

Plaintiffs appearing pro se have faith in all Courts of the United States. Plaintiffs rely on the wisdom of this court although Plaintiffs wish to reiterate that Herbert Ltd. was a case regarding copyrights and infringement, while the Chiste precedent cited by Defendant is a slip opinion, not immediately accessible.

Eighth Prone, Weight Accorded to Plaintiffs' Choice of Forum:

"*A court generally accords significant weight to a plaintiff's choice of forum.*" Herbert Ltd. at 291. According to analysis following, Herbert Ltd. directs this court to give gravity to Plaintiff Fteja who resides within the jurisdiction of this Court. Persuasively, I live within commuting distance. Thus, Herbert Ltd.'s Eighth Prone test favors Plaintiffs' Opposition to Defendant's MTD. The case must stay in New York.

Ninth Prone, Judicial Economy and the Interests of Justice:

Defendant relies on numbers of cases filed in California vis-à-vis New York to mislead this Court. In 1972, in Bremen, Chief Justice Burger characterized those times as an "*era when all courts are overloaded and when businesses once essentially local now operate in world markets*." Since Justice Burger's words, litigation has exponentiated. Defendant comparison of U.S. Courts caseload capacity is single-track baseless. By Defendant's standards, based on pure numbers, the least litigious State is New Jersey, where Plaintiff Fatouros resides, Plaintiff Fteja can commute with public transportation and Defendant's counsel maintains offices. Further, without looking into details, New Jersey has Federal courthouses in Newark, Trenton and Camden. From my personal knowledge of the Newark Courthouse, it is busy but it is not prohibitively busy to hear this case. If this Court's resources become stressed, aspects of this case may be transferred to or may take place in nearby Newark, New Jersey. This is not true of the Courts in California. The interests of justice overall favor Plaintiffs. Further Herbert Ltd.'s reading for additional important details reveals another closely associated lawsuit had already commenced by the Herbert Ltd.'s Parties or related litigants in California, over copyrights and infringements, an inapplicable factor to this case. Thus, Herbert Ltd.'s Ninth Prone test favors Plaintiffs' Opposition to Defendant's MTD. The case must stay in New York.

39. In conclusion, contrary to Defendant's claim that "Plaintiff freely and fully agreed to litigate any claims against Facebook exclusively in the courts of California," which Plaintiffs never agreed to and Defendant has not substantiated, there is no test result favoring this case to be transferred to California. The case must stay in New York.

C. Courts Favor Plaintiffs as Defendant's ToP is Mere *Yada Yada*

40. How Defendant has deceived millions of Facebook Members not to know about Defendant's ToP is described herein, ¶ 23. How Defendant omits most of its ToP and considers it "fine print," was demonstrated by Defendant's Exhibits, attached to Yang Decl.

41. Devin Looijen, a 2010 J.D. Candidate wrote about Defendant's Previous ToP in Time for a Change: The Schema of Contract in the Digital Era, 8 J. on Telecomm. & High Tech. L. 547 (2010), at 563:

> "In the case of Facebook, the home page states, in the smallest size text displayed, 'By clicking Sign Up, you are indicating that you have read and agree to the Terms of Use and Privacy Policy.' The text is located near the bottom corner of the page in light grey over a light blue background—not obscuring it, but certainly making it harder to notice. In such circumstances, it is unlikely that our hypothetical [user] would even realize he was agreeing to binding terms, terms that might even lock him out of the courts."

Undoubtedly, the way Defendant fails to inform applicant members about its agreement renders the forum selection in Defendant's ToP invalid.

42. This Court gives "*effect to parties forum-selection clauses when valid.*" Aguinaga v. UBS AG & UBS (Bahamas) Ltd., No. 09 Civ. 03261 (S.D.N.Y. 2010). Defendant hiding its ToP renders Defendant's forum selection clause invalid.

43. Signing up on Facebook does not unambiguously manifest assenting to Defendant's ToP. Absent further proof, allegations of forming a contract by clicking an internet button are absurd and judicially, this conclusion was expressed best by U.S. Supreme Court Associate Justice Sonia Sotomayor, who wrote the unanimous opinion in Specht v. Netscape Communications Corp., 306 F.3d 17, 20 (2d Cir.2002) while Justice Sotomayor still sat at the Court of Appeals:

> "[A] consumer's clicking on a download button does not communicate assent to contractual terms if the offer did not make clear to the consumer that clicking on the download button would signify assent to those terms, see Windsor Mills, 25 Cal.App.3d at 992, 101 Cal.Rptr. at 351 ('[W]hen the offeree does not know that a proposal has been made to him this objective standard does not apply.'). California's common law is clear that 'an offeree, regardless of apparent manifestation of his consent, is not bound by inconspicuous contractual provisions of which he is unaware, contained in a document whose contractual nature is not obvious.'" Specht, 29-30.

44. Reasoning on California law, Specht held that a consumer clicking on a Netscape button did not assent to an agreement. In Specht, Justice Sotomayor offered an anthology of cases the Defendant ought to take notice on how Defendant's ToP out to be presented without ambiguity, yet it is not:

> "See, e.g., Hotmail Corp. v. Van$ Money Pie Inc., 47 U.S.P.Q.2d 1020, 1025 (N.D.Cal. 1998) (granting preliminary injunction based in part on breach of 'Terms of Service' agreement, to which defendants had assented); America Online, Inc. v. Booker, 781 So.2d 423, 425 (Fla.Dist.Ct. App.2001) (upholding forum selection clause in 'freely negotiated agreement' contained in online terms of service); Caspi v. Microsoft Network, L.L.C., 323 N.J.Super. 118, 732 A.2d 528, 530, 532-33 (N.J.Super.Ct.App.Div.1999) (upholding forum selection clause where subscribers to online software were required to review license terms in scrollable window and to click 'I Agree' or 'I Don't Agree'); Barnett v. Network Solutions, Inc., 38 S.W.3d 200, 203-04 (Tex.App.2001) (upholding forum

> selection clause in online contract for registering Internet domain names that required users to scroll through terms before accepting or rejecting them); cf. Pollstar v. Gigmania, Ltd., 170 F.Supp.2d 974, 981-82 (E.D.Cal.2000) (expressing concern that notice of license terms had appeared in small, gray text on a gray background on a linked webpage, but concluding that it was too early in the case to order dismissal)."

The implementation of Defendant's ToP disregards these sensible suggestions for an on-line binding agreement. Defendant's ToP is invalid.

45. After omitting controlling Specht in its MoL and misconstruing Bremen and Carnival, Defendant desperately resorted to Register.com, Inc. v. Verio, Inc., 356 F. 3d 393 (2d Cir.2004) before reaching out to slip opinions. But Register.com refers us to and argues in favor of Justice Sotomayor's reasoning:

> "Verio seeks support for its position from cases that have dealt with the formation of contracts on the Internet. An excellent example, although decided subsequent to the submission of this case, is Specht v. Netscape Communications Corp. […] We ruled against Netscape and in favor of the users of its software because the users would not have seen the terms Netscape exacted without scrolling down their computer screens, and there was no reason for them to do so. The evidence did not demonstrate that one who had downloaded Netscape's software had necessarily seen the terms of its offer. *Verio, however, cannot avail itself of the reasoning of Specht*." *[Emphasis added.]*

46. Defendant sites its own harder to access cases of Facebook, Inc. v. Power Ventures, Inc., 2010 WL 3291750, at *7 n. 20 (N.D. Cal. July 20, 2010) and Miller v. Facebook, Inc., Civil Action No. 09-2810, slip op. at 2-8 (N.D. Ga. Jan 15, 2010). While Defendant provided a copy of Miller, (Exhibit A to the Declaration of Justin Nolan Kinney, Esq.), Defendant has not provided a copy of the other case. However, reading Miller and presuming it is analogous to the other case and by inferring what both cases may state through internet research, it appears that both cases relate to parties that (a) had a business relation with Defendant involving *"copyright infringement, violations of the Lanham Act, and unfair competition under the Georgia Deceptive Trade Practices Act…"* and (b) in both cases,

Defendant's opponents had been aware of Defendant's ToP, including additional segments of yada yada that Yang Decl. never sets forth. Plaintiffs in this action have a quite distinct case as Facebook members without any business relationship with the Defendant.

THIRD SECTION: MOTION TO DISMISS MUST BE DENIED

47. Unlike the part of the MTD portion regarding forum selection, this seems a more challenging concept to comprehend for a non-attorney like myself. However, looking up this Court's previous opinion in Williams v. Citibank, NA, 565 F. Supp. 2d 523 (S.D.N.Y. 2008) and a case listed in Justice Sotomayor's opinion, Pollstar v. Gigmania, Ltd., 170 F.Supp.2d 974 (E.D.Cal.2000), "*concluding that it was too early in the case to order dismissal*," at minimum, Plaintiffs are entitled to redraft their complains.

48. Neither Plaintiffs appear to have filed court papers alleging a contractual breach. That assessment was set forth by the Defendant. Defendant stated that Plaintiff Fteja "*cannot state a viable breach-of-contract claim or discrimination claim*." Plaintiffs are suing for damages in addition to discrimination suffered by Facebook's suspension. Further, Plaintiffs claim that an unjust Facebook suspension has caused them distress and tarnished their reputation. Thus, this case contains issues that must be resolved during trial.

49. Further, clearly, Defendant has set forth only a small part of its ToP, without any evidence that Plaintiffs had ever assented to it. However, Defendants Principles advocating openness and transparency appear to violate Defendant's own method of suspending members. Thus, Plaintiffs have legitimate claims Defendant's own filings and suspicious submissions of partial Exhibits have de facto and de jure amplified.

50. Plaintiffs have procured published articles that support very serious allegations of discrimination against Defendant being unduly influenced by ethnic and political considerations determining member suspensions on Facebook. Given the influence Defendant has all over the